

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1068 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO  
No
  2. To be referred to the Reporter or not? No :
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO  
No
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO  
No
  5. Whether it is to be circulated to the Civil Judge? No :

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JETHABHAI FOGATBHAI TADVI

Versus

NATHA BHAI MOTILAL MODI  
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Appearance:

MR JS ADHYARU for Petitioner  
MR RN SHAH for Respondent No. 1  
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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 18/02/2000

#### ORAL JUDGEMENT

1. This is tenant's revision under Section 29(2) of the Bombay Rent Act against the Judgment and Decree of the lower Appellate Court partly allowing the Appeal adjusting the arrears of rent paid by the revisionist, but maintaining the decree for eviction of the revisionist.

2. Brief facts are that the revisionist was tenant in the disputed accommodation on monthly rent of Rs.23/-. It was alleged by the landlord respondent that the rent upto 31.5.1977 was paid and it was not paid after

1.6.1977 to 31.5.1980. Three years rent remained due. Notice was given on 5.6.1980 terminating the tenancy and demanding arrears of rent. Notice was served, but neither the arrears were paid nor the premises was vacated. As such the Suit was filed for eviction of the revisionist on the ground of non-payment of rent for more than six months and also on the ground that the disputed property was required for personal and bonafide requirement of the landlord respondent.

3. The Suit was contested by the revisionist on the ground that he is not in arrears of rent from 1.6.1977 to 31.5.1980. On the other hand he admitted to be in arrears of rent from 1.6.1978 to 31.5.1980. It was also alleged that because of mistake of the landlord in mentioning incorrect year in one of the rent receipts that arrears of rent from 1.6.1977 were claimed. Bonafide personal requirement of the landlord was also disputed.

4. Eviction of the revisionist on ground of bonafide and personal requirement of the landlord was not pressed before the trial Court as well as before the Appellate Court.

5. The trial Court found that the revisionist was in arrears of rent for more than six months which he failed to pay despite service of notice of demand. Accordingly the Suit was decreed. The tenant's plea of payment of one year's rent which was not adjusted by the landlord was repelled by the trial Court.

6. The Appellate Court found that there was mistake on the part of the landlord in issuing correct receipt showing the correct year and as such the plea of adjustment of rent set up by the revisionist was accepted by the lower Appellate Court. So far as the arrears of rent was concerned the Appellate Court agreed with the trial Court and found that the revisionist was in arrears of rent exceeding six months which was not paid within a month of service of notice of demand. Consequently the Appeal was partly allowed. After granting adjustment of payment of rent set up by the revisionist the Appeal was partly allowed and the suit for eviction was decreed, but the decree for arrears of rent was modified to Rs.524/- only. It is, therefore, this revision.

7. No doubt the Appellate Court has disagreed with the findings of the trial Court regarding arrears of rent and has granted adjustment of one year's rent as claimed by the tenant revisionist, but on this ground only interference in revision is not permissible. The Appellate Court has given cogent reasons as to how the mistake occurred in issuing receipt. The adjustment

granted by the Appellate Court, therefore, requires no interference.

8. So far as the decree for eviction on the ground of Section 12(3)(a) of the Rent Act is concerned, it requires no interference because on this point there is concurrent findings of the two courts below. The appellate Court even after accepting the tenant's plea of part payment of rent concluded that even from the reply notice it was clear that more than six months rent was due from the revisionist. The revisionist's case was that he was in arrears of rent for 23 months. In face of this admission and further in face of the fact that the rent for the aforesaid 23 months was not paid after service of notice of demand the tenant was certainly liable to be evicted. He did not raise any dispute of a standard rent. The lower Appellate Court in these circumstances rightly held that the case is covered by Section 12(3)(a) of the Bombay Rent Act. If the case was covered under Section 12(3)(a) of the Rent Act then the Courts below had no option, but to decree the Suit for eviction. The Lower Appellate Court has rightly held that the tenant is not entitled to protection either of Section 12(1) of the Rent Act or the protection under Section 12(3)(b) of the Rent Act. It was correctly observed by the lower Appellate Court that there is nothing to show readiness and willingness on the part of the tenant to pay the rent for a period of 23 months. Since the case was covered under Section 12(3)(a) of the Rent Act the protection under Section 12(3)(b) of the Act could not be granted to the revisionist. As such the Courts below were justified in granting the Decree for eviction.

9. For the reasons stated above there is no merit in this revision which is liable to be dismissed. The revision is accordingly dismissed with no order as to costs.

sd/-

Date : February 18, 2000 ( D. C. Srivastava, J. )

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